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In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 61

PUROLATOR PRODUCTS, INC., PETITIONER

v.

FEDERAL TRADE COMMISSION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE

The Solicitor General has authorized the Federal Trade Commission to file a brief in opposition to the granting of the petition for a writ of certiorari in this case. While the United States agrees with the Commission that the petition should be denied as to part of the case, it believes that the Commission's disposition of one aspect of this proceeding is erroneous and, unless reversed, may well adversely affect the proper administration of the Robinson-Patman Act. We believe that the petition should be granted to resolve these issues.

STATEMENT

The Federal Trade Commission brought this proceeding under Section 2(a) of the Clayton Act, as amended by the Robinson-Patman Act (15 U.S.C. 13(a)), charging petitioner ("Purolator") with practicing illegal price discrimination among certain classes of customers in the distribution system through which Purolator's merchandise reaches the consumer. Section 2(a) makes it unlawful "for any person engaged in commerce * * * either directly or indirectly, to discriminate in price between different purchasers of commodities of like grade and quality * * * where the effect of such discrimination may be substantially to lessen competition."

Purolator manufactures automobile replacement filters for oil, air and gasoline. These filters are sold to the general public through a chain of distribution which ordinarily involves, in turn, warehouse distributors, jobbers and dealers.[1] The most common means by which a filter reaches an automobile owner is for Purolator to sell the filter to a warehouse distributor, who in turn sells it to a jobber, who sells it to a dealer, who, finally, sells to the consumer. See diagram, p. 5, *infra*. This ordinary chain, however, is varied in some instances, and it is these variations—and the

[1] Filters are sold to fleets of automobiles at lower rates through a somewhat different chain of distribution, which eliminates retail dealers. Since fleet sales raise no issues in this case not raised by sales to the general public through retail dealers, fleet sales will not be discussed in this memorandum.

price differentials which accompany them—which are the subject of the present litigation.

The variations in Purolator's distribution system affect the warehouse distributor and jobber stages in the chain. One variation occurs when, in some instances, the independent jobber stage is eliminated by a warehouse distributor who sells some filters directly to a nearby dealer. See diagram, p. 7, *infra*. By far the most important variations occur, however, not because particular entities in the distribution chain are bypassed, but because of vertical integration among some of the warehouse distributors and jobbers who deal in Purolator's products. While most of Purolator's warehouse distributors and jobbers are independently owned, some jobbers are either owned by—or own—the warehouse distributor from whom they obtain filters, thus forming what the Commission has treated as a single, integrated warehouse-distributor-jobber entity; these entities have been referred to below, and in the Commission's brief in opposition, as warehouse distributors "with branches." These integrated entities perform essentially the same function as is performed by independent warehouse distributors and independent jobbers, and they perform it in a similar manner. They buy filters from Purolator and distribute them to dealers, first through a central warehouse equivalent to the facilities of an independent warehouse distributor, and then through smaller "branch" warehouses equivalent to the facili-

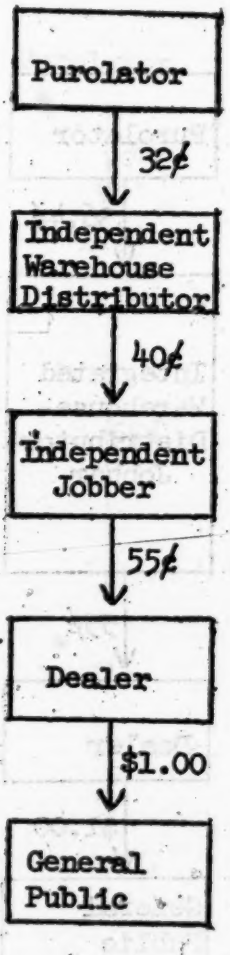
ties of independent jobbers. See diagram, p. 6, *infra*. In addition, in some relatively rare instances, the integrated entity sells a filter, not directly to a dealer, but to an independent jobber who then sells to a dealer. See diagram, p. 8, *infra*.

Purolator's price structure for these various methods of distribution is described in detail in the court of appeals' opinion (Petitioner's Appendix B, pp. 5a–7a) and in the Commission's opinion (Record, pp. 39–42). Prices at all levels of distribution are involved, for while Purolator sells directly only to integrated and independent warehouse distributors, it suggests and maintains resale prices to jobbers, retail dealers, and to final consumers. Based upon an ultimate suggested consumer price of $1.00, Purolator suggests that filters be sold to all independent jobbers for 40 cents and to all retail dealers for 55 cents. Purolator's own prices to warehouse distributors vary with the method of distribution involved and are as follows:

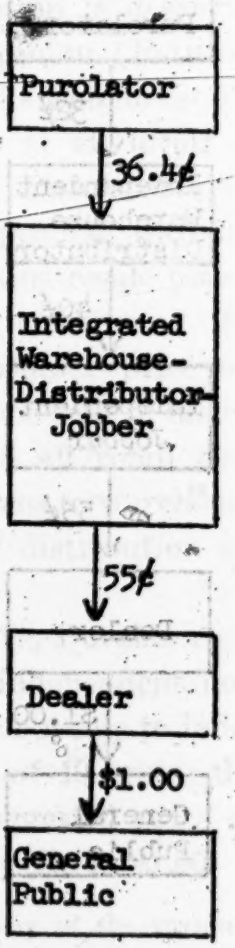
(1) As noted above, Purolator sells the vast majority[2] of its filters to independent, non-integrated, warehouse distributors for resale to independent jobbers at the suggested price of 40 cents; the jobbers then sell to dealers at the suggested price of 55 cents and the dealers sell to the public at $1.00. Purolator charges

[2] The relative frequency of the various types of distribution for Purolator filters is indicated by Commission Exhibit 21, R. 880–891; see also R. 971–972.

independent warehouse distributors 32 cents on these sales. Schematically, this form of distribution, which is free of any vertical integration, may be represented as follows:



(2) In the next most common form of distribution, Purolator sells filters to vertically integrated warehouse-distributor-jobbers for resale to dealers at 55 cents. Purolator charges the integrated entities 36.4 cents on such sales. These sales may be represented as follows:



(3) On the relatively few filters resold directly by independent warehouse distributors to retail dealers at 55 cents—thus by-passing the jobber stage of distribution—Purolator charges the warehouse distributor 38 cents:

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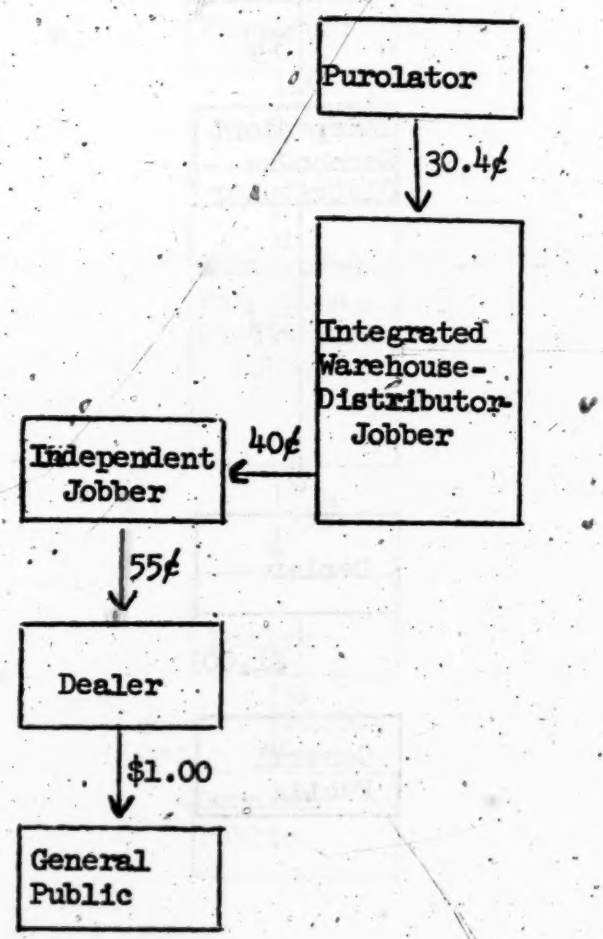
(4) A small number of filters are also sold by Purolator to integrated warehouse-distributor-jobbers who then sell them to independent jobbers at 40 cents for sale to dealers at 55 cents. A filter that is the subject of this complex and relatively unusual distribution arrangement is sold by Purolator to the integrated entity for 30.4 cents:



Based upon these facts, the Commission found three separate violations of the Robinson-Patman Act in Purolator's pricing policies:

(a) It was stipulated that, while warehouse distributors ordinarily paid Purolator 38 cents for filters sold directly to dealers at 55 cents (see ¶ (3), p. 7, *supra*), one warehouse distributor paid Purolator only 32 cents for such filters (R. 110–113). Purolator admitted before the Commission and the court of appeals that this favored treatment constituted a violation of the Act. Petitioner does not now challenge the propriety of a cease-and-desist order on this aspect of the case and we shall omit it from further discussion.

(b) As noted above (compare ¶ (1), *supra*, pp. 4–5, with ¶ (4), *supra*, p. 8, independent warehouse distributors buying filters sold to independent jobbers at 40 cents—the most frequent chain of distribution of Purolator products—pay 32 cents for such filters, but integrated warehouse-distributor-jobbers pay 30.4 cents in the rare instances where they also sell filters to independent jobbers rather than to dealers directly. Thus, an integrated entity has a higher mark-up on a sale to an independent jobber than does an independent warehouse when it sells to a jobber (9.6 cents as opposed to 8 cents). Similarly (compare ¶ (2), supra, p. 6, with ¶ (3), *supra*, p. 7), an integrated warehouse-distributor-jobber pays 36.4 cents for a filter sold by it to a dealer for 55 cents—the normal course of distribution for an integrated entity—while an independent warehouse distributor, in the relatively rare case when a sale is made directly by such

a warehouse to a dealer, pays a higher price of 38 cents for a filter sold to the dealer at 55 cents. Again the integrated entity has the higher mark-up for the same resale (18.6 cents as opposed to 17 cents). The Commission found that these lower prices to integrated warehouse-distributor-jobbers when they performed the same function as independent warehouses—*i.e.*, reselling filters to dealers or independent jobbers at identical prices of 55 and 40 cents—constituted a discrimination violating the Robinson-Patman Act (R. 43). The court of appeals affirmed this determination (Pet. App. B 22a). The finding is now challenged by petitioner.

(c) Finally, the Commission held that Purolator was practicing illegal price discrimination on filters sold to dealers as between independent jobbers, on the one hand, and independent warehouse distributors and integrated warehouse-distributor-jobbers, on the other. Independent jobbers uniformly pay 40 cents for filters resold to dealers at 55 cents, and thus have a mark-up of 15 cents. Integrated warehouse-distributors, however, pay 36.4 cents for filters sold by them to dealers at 55 cents and thus have a mark-up of 18.6 cents, and independent warehouse distributors pay 38 cents for such filters, with a mark-up of 17 cents, (See ¶¶ (2) and (3), *supra*, pp. 6–7). Thus, independent jobbers pay more for, and have a lower mark-up on, filters sold by them to dealers than do independent warehouse distributors or integrated warehouse-distributor-jobbers when either of those entities sell to dealers.

The Commission recognized that, in thus comparing the price charged by warehouse distributors to independent jobbers who sell to dealers (40 cents) with the prices charged by Purolator to independent and integrated warehouse distributors who sell to dealers (38 cents and 36.4 cents), it was comparing sales by different vendors at distinct levels of distribution—*i.e.*, the warehouse distributors (both independent and integrated) buy from Purolator and the independent jobbers buy, in turn, from warehouse distributors. The Commission, however, applied the so-called "indirect purchaser" doctrine, developed in prior cases, to find that the independent jobbers, like the warehouse distributors, were legally "purchasers" from Purolator even though such jobbers actually bought from intermediate warehouse distributors rather than from Purolator. The Commission found that "the evidence reveals that * * * [Purolator] has, in effect, established the prices at which the jobbers purchase from the warehouse distributors and controls the terms under which the purchases are consummated," and it also reveals "instances of direct contact between * * * [Purolator] and the indirect buying jobbers." The Commission concluded that "the jobbers effectively were * * * [Purolator's] customers rather than the distributors' and, for the purpose of the Robinson-Patman Act, * * * [Purolator] is thus chargeable with the competitive effects of distributors' price to jobbers" (R. 62).

In accord with its finding that all three entities—independent jobbers, independent warehouse distributors, and integrated warehouse-distributor-jobbers—were

legally purchasers from Purolator competing with each other on sales to dealers, the Commission compared the prices paid by these different classes of purchasers. The Commission found that the price differences of 3.6 cents and 2 cents, respectively, between the prices paid to Purolator by warehouse distributors (38 cents and 36.4 cents) and the price paid by independent jobbers to warehouse distributors (40 cents) were sufficiently high in the context of "a highly competitive market with narrow profit margins" to constitute a threat of injury to competition (R. 49). The Commission concluded that a *prima facie* case of a Section 2(a) violation had been established by showing significantly different prices to different "purchasers," and that Purolator had not offered evidence of its own differing costs which would rebut this case (R. 49, 52, 68, 70). The court of appeals affirmed (Pet. App. B 22a). Petitioner urges that this determination also constitutes error.

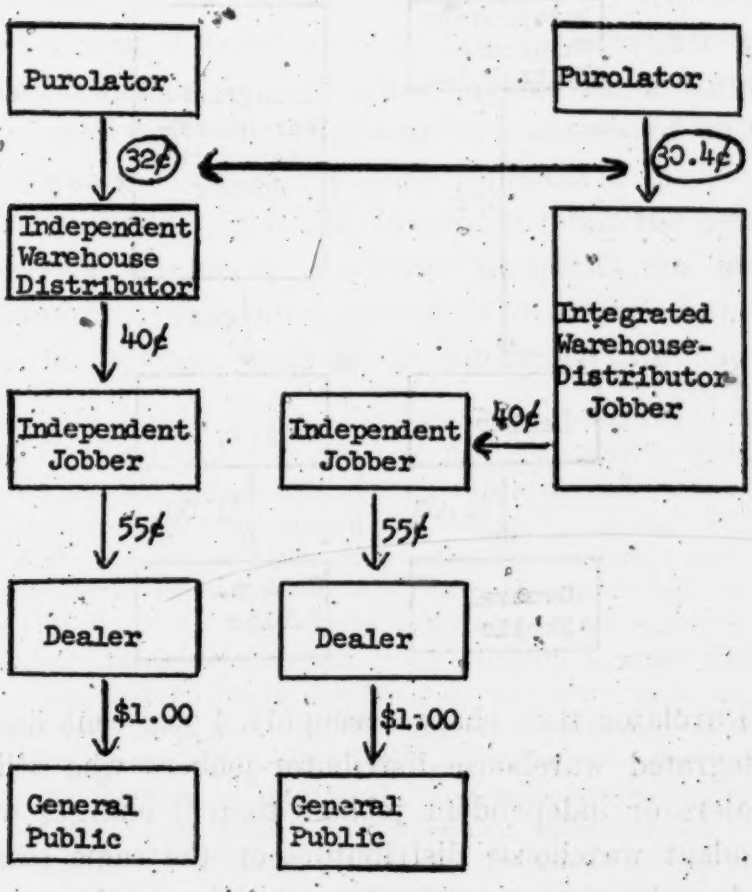
DISCUSSION

We discuss each of the challenged aspects of the Commission's order in turn.

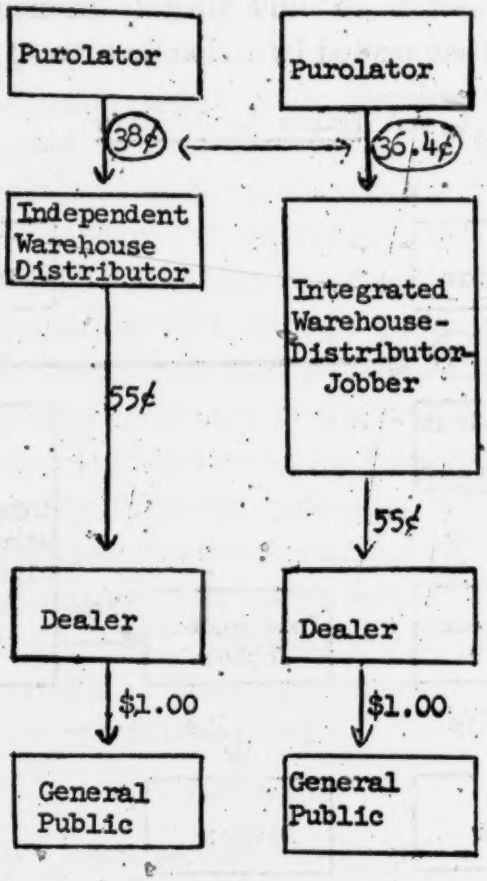
1. The Commission found illegal price discrimination inherent in the fact that Purolator charged higher prices to independent warehouse distributors on sales to jobbers and dealers than it charged to integrated warehouse-distributor-jobbers on similar sales.

The discriminations found are shown in the following diagrams (in each instance the prices compared by the Commission to find illegal discrimination are circled and connected by a double arrow):

A. Sales to Jobbers



B. Sales to Dealers



Purolator thus charges roughly 4 per cent less to integrated warehouse-distributor-jobbers who sell to dealers or independent jobbers than it charges independent warehouse distributors on the same sales—30.4 cents as opposed to 32 cents where sales to jobbers are concerned and 36.4 cents as opposed to 38 cents where sales to dealers are concerned. As far as the record reveals, in each case the integrated ware-

house-distributor-jobber performs the same service in the distribution chain as does the independent warehouse distributor, *i.e.*, each entity distributes the filter either to a retail dealer or to an independent jobber, and each type of warehouse also purchases these filters directly from Purolator.

In these circumstances, we agree with the Commission that a *prima facie* violation of the Act was demonstrated, since Purolator maintained a significant price differential between two classes of customers who performed the same function in the chain of distribution.[3] Nor did Purolator rebut the *prima facie* case against it. In order to justify the price differentials, Purolator presented evidence showing that the internal costs of an integrated warehouse-

[3] It is true that, if integrated warehouse distributors and independent warehouse distributors did not actually compete with each other in these sales (as may be suggested by the fact that in each instance of alleged discrimination, one type of sale was relatively rare and the other relatively common), the discrimination in price may not have injured competition, as required by the Act. Such would be the case if, for example, independent warehouse distributors sold directly to retail dealers only when a retail dealer happened to be located close to the independent warehouse and no integrated warehouse-distributor-jobber attempted to sell to such a retailer. Similarly, this would be the case if integrated warehouse-distributor-jobbers sold to independent jobbers only when two redistributions (one, internally, to the affiliated jobber and the second to the independent jobber) were necessary to supply parts to unusually distant or inaccessible dealers and no independent warehouse distributor attempted to sell to these independent jobbers. Purolator, however, has made no such contentions or demonstration in this case, and such circumstances cannot, in our view, be presumed in the absence of such evidence.

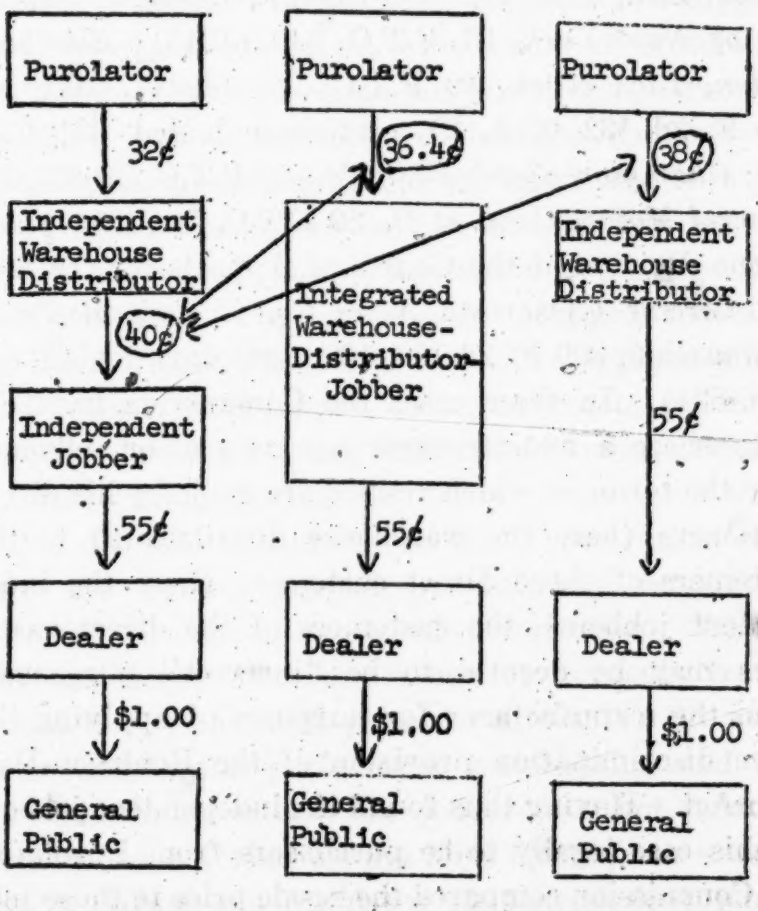
distributor-jobber, when it sold to a retail dealer (or to an independent jobber), were greater than the internal costs of an independent warehouse distributor on the same sales. We believe, however, that evidence of these costs was, as the Commission held, irrelevant. Such evidence, even if it showed that an integrated entity's costs in making distribution to a dealer or independent jobber were more than 4 per cent higher than an independent warehouse distributor's costs for the same function, would merely show that the integrated entity constituted a less efficient means of effecting the particular desired distribution than an independent warehouse. Such a subsidization of inefficient competitors as against efficient ones would in our view constitute no less a price discrimination affecting competition than a system which accords a lower price to one of two equally efficient competitors. Regardless of their efficiency, competitors performing the same function ought to be able to buy at the same price, so long as the seller's costs relating to each are the same.

We therefore believe that there is no occasion for further review of this aspect of the Commission's order.

2. We do, however, disagree with the Commission's disposition of the remaining legal issues in the case, and we believe these issues to be of sufficient importance to warrant review by this Court.

The Commission found illegal price discrimination in the differences between the price on sales by ware-

house distributors to independent jobbers for resale to dealers (40 cents) and the prices charged by Purolator to integrated warehouse-distributor-jobbers and to independent warehouse distributors for resale by those entities to dealers (36.4 cents and 38 cents, respectively). The alleged discriminations are shown schematically in the following diagram, with the prices compared by the Commission to find illegal discrimination enclosed in circles and connected by double arrows:



The Commission thus found illegal discrimination by Purolator through comparing the prices charged *to jobbers by warehouses*—prices suggested and maintained by Purolator—with the prices charged *to warehouses by Purolator* itself. The Commission believed this comparison of prices charged at different levels of distribution to be justified through the application of the so-called "indirect purchaser" doctrine developed in a series of Commission cases (*Kraft-Phenix Cheese Corporation,* 25 F.T.C. 537 (1937); *Luxor, Ltd.,* 31 F.T.C. 658 (1940); *Dentists' Supply Co. of New York,* 37 F.T.C. 345 (1943); *Elizabeth Arden, Inc., et al.,* 39 F.T.C. 288 (1944), affirmed, 156 F. 2d 132 (C.A. 2), certiorari denied, 331 U.S. 806; *Champion Spark Plug Co.,* 50 F.T.C. 30 (1953); *General Motors Corp. et al.,* 50 F.T.C. 54 (1953)) and in one decision of the Courts of Appeals for the Second Circuit (*American News Co.* v. *Federal Trade Commission,* 300 F. 2d 104, 109, certiorari denied, 371 U.S. 824). In these cases the Commission has held that, where a manufacturer has control or influence over the terms at which resales are made by his direct customers (here the warehouse distributors) to the customers of those direct customers (here the independent jobbers), the customers of the direct customers may be deemed to be "indirect" purchasers from the manufacturer for purposes of applying the price discrimination provision of the Robinson-Patman Act. Having thus found the independent jobbers in this case legally to be purchasers from Purolator, the Commission compared the resale price to those job-

bers with the price charged by Purolator to its direct warehouse customers. This price differential was significant in terms of the profit margins in the industry, and the Commission therefore found the existence of *prima facie* price discrimination which it held could be rebutted only by a demonstration by Purolator that its costs were higher in one type of sales than in the other. Such evidence was not present.

While the United States agrees that the "indirect" purchaser doctrine has legitimate application in preventing price discrimination on the part of a supplier who controls resale prices, even where all or some of the purchasers involved do not buy directly from the supplier, it does not believe that the doctrine can properly be invoked as the Commission used it in this case. The doctrine, we believe, should only be used to compare prices paid by purchasers at the *same* level of distribution who presumably perform the same function. Thus, the doctrine would be applicable here if Purolator maintained different resale prices to different jobbers playing relevantly identical roles in the distribution process.

The doctrine should not be used, however, to compare the prices charged by different vendors at different functional levels of distribution. Jobbers and warehouse distributors cannot normally be expected to pay the same price for filters, for the warehouse distributor performs a warehousing and distributing function that the jobber does not perform and, indeed, a jobber always buys filters *from* a warehouse. When one compares an independent jobber

with an integrated entity which acts both as a jobber and a warehouse-distributor, one must thus take into account that the integrated entity not only acts as a jobber, distributing filters to retail dealers, but also acts as a warehouse distributor, receiving the filters from Purolator and distributing them to affiliated jobbers. In the case of an independent jobber, the warehousing and distributing function is performed by the warehouse from which the jobber buys. It is natural, therefore, that the independent jobber pays a higher price than does the integrated entity, for some of the service which an integrated entity performs has already been performed when the jobber purchases from the warehouse. Similar reasoning may also be applicable to differences between the prices charged by Purolator to independent warehouse distributors who sell directly to retail dealers and the prices charged by warehouse distributors selling to jobbers; at all events, the Commission should not find illegal discrimination inherent in such differences without a preliminary finding that the warehouse and the jobber do, in fact perform the same function.[4]

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[4] In past cases where the indirect purchaser doctrine has been employed by the Commission, it has not been used to compare prices at different levels of the distributional chain but only where discrimination exists between two or more "indirect purchasers" at the same level. In most of these cases (cited at p. 20, *supra*) a wholesaler bought from a supplier and then discriminated between two retailers to whom he resold. The Commission held that since the supplier was responsible for setting the prices of the wholesaler, he should be chargeable with the resulting price discrimination. See *K. S. Corp.* v.

Not only does the Commission's holding here thus seem unsupportable in theory, but we believe that it would have unfortunate economic consequences. Specifically, the Commission's approach would largely impede the achievement of economies through vertical integration of the steps of the distribution process, where competitive and economic factors might otherwise lead to such integration. In many industries supplies will be distributed more efficiently and economically by an integrated warehouse and jobber than by two separate independent entities. The integrated warehouse-distributor-jobbers in this case are

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Chemstrand Corp., 198 F. Supp. 310 (S.D. N.Y.); *Dentists' Supply Co.*, 37 FTC 345; *Kraft-Phenix Cheese Corp.*, 25 FTC 537. Indeed, in *American News Co.* v. *Federal Trade Commission*, 300 F. 2d 104 (C.A. 2), certiorari denied, 371 U.S. 824, a supplier directly paid rebates to some customers of his wholesalers, but not to others. A second group of cases involved a refusal to supply certain services to all customers. Respondents in those cases sold directly to some retailers and also sold to wholesalers who resold to retailers. They supplied demonstration and other services to some retailers but not to others. The Commission required them to make their services available to all retailers on equivalent terms. See *Elizabeth Arden, Inc., et al.*, 39 FTC 288, affirmed, 156 F. 2d 132 (C.A. 2); *Luxor Ltd.*, 31 FTC 658.

The court in *American News Company* suggested another situation in which the "indirect purchaser" doctrine might be appropriately applied. A supplier may wish to discriminate between two customers. Knowing that such discrimination is illegal, he may create a "dummy" wholesaler, the sole function of which is to buy the supplier's product at the price charged the "favored" customer and resell it to the "disfavored" customer at a higher price. This patent evasion of the statute would seem to justify finding that the "dummy" wholesaler performs no real function. The Commission has not suggested that such a sham middleman is present in this case.

probably an illustration of just such economies; here, for example, the mark-up taken by an integrated entity which buys from Purolator and sells to dealers is 18.6 cents (55 cents minus 36.4 cents—see ¶2, *supra*, p. 6), while total mark-up between Purolator and the dealer when filters pass through an independent warehouse and an independent jobber is 23 cents (55 cents minus 32 cents—see ¶1, *supra*, pp. 4–5). A somewhat different form of potentially economical vertical integration is illustrated by *Alhambra Motor Parts*, F.T.C Docket No. 6889 (Dec. 17, 1965), where groups of independent jobbers formed cooperative warehouses in an attempt to compete with the standard distribution chain requiring separate warehouses and jobbers. Where such integration produces significant economies, it should spur competition by forcing the competitors of the integrated entity to look for more efficient methods of distribution. Such savings in the cost of distribution should ultimately be passed on to the consumer in the form of lower prices.

To require a supplier such as Purolator to charge an integrated warehouse-distributor-jobber—or an integrated cooperative—the same price as is charged to an independent jobber who performs no warehousing function would make such integration—and the resulting competition—impossible, for it would give the integrated entity no credit for performing two functions and it would force it to compete with jobbers who pay the same price but perform substantially fewer tasks in the distribution process. To use the

figures in this case as illustrations, the Commission's rule would require integrated entities to pay 40 cents for filters sold to dealers—the same price independent jobbers pay. Both would thus be permitted mark-ups of 15 cents in selling to dealers at 55 cents. Yet the integrated entity's mark-up must cover the cost of warehousing, which the jobber's mark-up does not cover. Indeed, the jobbers buy from a warehouse with an 8-cent mark-up (the warehouse pays Purolator 32 cents) specifically covering warehousing.

In sum, the United States believes that the Robinson-Patman Act was intended to assure only that "businessmen *at the same functional level* would start on equal competitive footing so far as price is concerned" (emphasis added). *Federal Trade Commission* v. *Sun Oil Co.*, 371 U.S. 505, 520. The Act plainly did not intend to require uniformity of price among purchasers operating at different functional levels, particularly where such uniformity may, as we suggest, significantly impede economies by protecting existing—and possibly antiquated—distribution systems from the normal pressures of competition and distributional innovation. Cf. *Automatic Canteen Co.* v. *Federal Trade Commission*, 346 U.S. 61, 74. The importance of the issues is, in addition, emphasized by the fact that, in a series of recent cases, the Commission has used the same approach as it used in this case to reach similar results. See *National Parts Warehouse*, F.T.C. Docket No. 8039 (decided December 16, 1963), CCH Trade Reg. Rep. (1963–1965

Transfer Binder), para. 16700, at 21624–26, affirmed *sub nom. General Auto Supplies, Inc.* v. *Federal Trade Commission*, 346 F. 2d 311 (C.A. 7), petition for certiorari dismissed pursuant to Rule 60, 382 U.S. 923; *Monroe Auto Equipment Co.*, F.T.C. Docket No. 8543 (decided July 28, 1964), CCH Trade Reg. Rep. (1963–1965 Transfer Binder), para. 17011, at 22122–13, affirmed *sub nom. Monroe Auto Equipment Co.* v. *Federal Trade Commission*, 347 F. 2d 401 (C.A. 7), certiorari denied, 382 U.S. 1009; *Alhambra Motor Parts*, F.T.C. Docket No. 6889 (decided December 17, 1965). The validity of this approach should, we believe, be passed upon by the Court at this time.[5]

[5] The dangers of the Commission's *prima facie* rule would not be mitigated even if the Commission permitted a manufacturer such as Purolator to rebut the *prima facie* case against it by showing that its price differential to integrated entities—as compared with its price to independent jobbers—is no greater than the cost of performing the warehousing function. In the first place, the Commission has never suggested that such a defense is available. Secondly, the burden of showing costs in a Robinson-Patman Act proceeding is enormous; the Commission is not often content with accounting estimates; elaborate cost studies are required; and ordinary business records are rarely sufficient. See *Automatic Canteen Co.* v. *Federal Trade Commission*, 346 U.S. 61, 68. Moreover, since the warehouse distributors are independent of the manufacturer, the burden would be especially difficult to meet since the data necessary to show warehousing costs ordinarily is not in the hands of the manufacturer. While it may be reasonable to require a supplier to present evidence of his own costs when he argues that a price differential he imposes is cost justified under Section 2(b) of the Act, it is far less justifiable to make him present evidence of the costs of an independent business-

CONCLUSION

For the above reasons, we respectfully submit that the Court should grant the petition for certiorari to consider questions I, III and IV of the petition which, we believe, may appropriately be restated as follows:

"Whether a supplier who charges his direct purchasers prices different from those charged indirect purchasers at a lower functional level of distribution is in violation of Section 2(a) of the Robinson-Patman Act."

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man when he charges the same price to all purchasers at the same level of distribution.

Moreover, we see no reason why an integrated entity performing both warehousing and jobbing functions is not entitled, not merely to a deduction from the jobber's price which is equal to warehousing costs, but to buy at the same price as an independent entity which performs equivalent warehousing functions and which sells to jobbers. Where, as in this case, independent warehouses buy from Purolator at 32 cents and resell to jobbers at 40 cents, no discrimination favoring integrated warehouse-distributor-jobbers would seem to inhere in a pricing system which also permits such entities to purchase from Purolator at 32 cents, regardless of whether the independent warehouses' 8-cent mark-up exceeds the costs of warehousing. The presence of an integrated competitor who is free to buy at the same price as an independent warehouse may ultimately be expected to provide competition which will compel the reduction of any unreasonably high mark-up which independent warehouses now enjoy. The Commission's approach, on the other hand, protects any existing excessive mark-ups by independent warehouses in sales to independent jobbers by making it impossible for the jobbers to avoid the mark-up by achieving integration with a warehouse distributor.

If the Court grants the petition, the Solicitor General will authorize the Commission to defend its order, and will file a brief *amicus curiae* setting forth in greater detail the views of the United States.

THURGOOD MARSHALL,
Solicitor General.
DONALD F. TURNER,
Assistant Attorney General.
PAUL BENDER,
Assistant to the Solicitor General.

JULY 1966.

U.S. GOVERNMENT PRINTING OFFICE: 1966